

Legislative Analysis



0.08 BAC FOR ORVS, WATERCRAFT, AND SNOWMOBILES

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House Bill 4789
Sponsor: Rep. Bettie Cook Scott

House Bill 4795
Sponsor: Rep. Marc Corriveau

House Bill 4794
Sponsor: Rep. Tonya Schuitmaker

House Bill 4813
Sponsor: Rep. Neal Nitz

Committee: Judiciary
Complete to 6-5-07

A SUMMARY OF HOUSE BILLS 4789, 4794, 4795, AND 4813 AS INTRODUCED 5-17-07

The bills would amend various provisions of the Natural Resources and Environmental Protection Act pertaining to the operation of ORVs, watercraft, and snowmobiles to make them conform to recent changes in the drunk driving provisions of the Michigan Vehicle Code.

Currently under the NREPA, it is prohibited to operate an ORV, watercraft, or snowmobile while under the influence of intoxicating liquor or a controlled substance, or both.

House Bill 4789 would amend provisions pertaining to ORVs (MCL 324.81101 et al.). House Bill 4794 would amend provisions pertaining to watercraft (MCL 324.80101 et al.). House Bill 4795 would amend provisions pertaining to snowmobiles (MCL 324.82101 et al.). House Bill 4813 would amend the sentencing guidelines. The bills would take effect January 1, 2008.

House Bills 4789, 4794, and 4795 would, in general, do the following:

- Replace references to “intoxicating liquor” with “alcoholic liquor” and define that term as it is in Section 1d of the Michigan Vehicle Code.
- Prohibit a person from operating an ORV, watercraft, or snowmobile with a bodily alcohol content (BAC) of 0.08 grams or higher or any bodily amount of a Schedule 1 controlled substance or cocaine. This would be in addition to the current prohibitions on being under the influence of alcohol or a controlled substance or both and of operating a vehicle or vessel while visibly impaired from the consumption of alcohol or a controlled substance or both.
- Prohibit the owner or person in charge of an ORV, watercraft, or snowmobile from allowing another person to operate the vehicle or vessel while having a BAC of 0.08 grams or higher; any bodily amount of a Schedule 1 controlled substance or cocaine; or while the person’s ability to operate the vehicle or vessel was visibly impaired due to the consumption of alcohol, a controlled substance, or a combination of both. This

would be in addition to the current prohibition on being under the influence of alcohol or a controlled substance or both.

- Change all current references to a BAC of 0.10 grams to a BAC of 0.08 grams.
- Delete language pertaining to legal presumptions for operators of ORVs, watercraft, and snowmobiles. Currently, if at the time of the offense the person had a BAC of 0.07 grams or less, he or she is presumed not to be impaired. A BAC of more than 0.07 grams but less than 0.10 is presumed to be impaired. A BAC of 0.10 or more is presumed to be under the influence. (Identical presumptions contained in the Michigan Vehicle Code were eliminated by Public Act 61 of 2003.)
- Delete the definition of “serious impairment of a body function” and replace it with the definition contained in Section 58c of the Michigan Vehicle Code.
- Prohibit the operation of an ORV while visibly impaired due to consumption of alcoholic liquor and/or a controlled substance. A person convicted of operating an ORV while visibly impaired would be prohibited from operating an ORV for 93 days to a year for a first offense, six months to eighteen months for a second offense, and one to two years for a third or subsequent offense.
- Establish tiered criminal penalties for an owner or person in charge who allowed a person to operate an ORV when intoxicated or visibly impaired.
- Increase the suspension of a person’s right to operate a snowmobile for unreasonably refusing to submit to a chemical test from six months to one year for a first refusal, and from one year to two years for a second or subsequent refusal within seven years.
- For watercraft and snowmobile violations involving alcohol and/or controlled substances, allow enhanced penalties and permanent revocation of the right to operate a vessel or snowmobile upon a third conviction regardless of the years elapsed since the previous convictions (currently, these penalties are triggered when a person had two or more convictions in the previous 10 years).
- Apply the enhanced penalty for repeat violations of operating a watercraft while visibly impaired to a third or subsequent conviction, regardless of the number of years elapsed since the prior convictions, instead of the current restriction that the previous convictions be within 10 years.
- Allow a court to permanently revoke a person's right to operate a watercraft upon a third or subsequent violation of the alcohol and controlled substance prohibitions instead of only when the person had two or more prior convictions within a ten year period.

House Bill 4813

The bill would amend the Code of Criminal Procedure (MCL 777.13g) to specify that allowing an ORV to be operated by a person while intoxicated or impaired causing death

would be a Class E felony against a person with a maximum term of imprisonment of five years; causing serious impairment would be a Class G felony with a two year maximum term of imprisonment. The bill would also amend existing sentencing guidelines pertaining to operating vessels, ORVs, and snowmobiles while under the influence causing death or serious impairment to include the elements of being impaired or with the presence of a controlled substance.

The bill is tie-barred to House Bills 4789, 4794, and 4795.

FISCAL IMPACT:

The bills' fiscal impact on local and state correctional systems would depend on how they affected misdemeanor and felony convictions and sentences. There apparently are no data on the number of misdemeanor convictions under current law, but to the extent that the bills increased the numbers of misdemeanor sentences, local costs of jail incarceration or misdemeanor probation supervision, both of which vary by jurisdiction, could increase.

To the extent that the bills increased the numbers of felony convictions for initial or subsequent offenses, they could increase state or local correctional costs. The average appropriated cost of incarceration in a state prison is about \$31,000 per prisoner annually, a figure that includes allocated portions of various fixed costs. The state's average cost of felony parole and probation supervision is about \$2,000 per supervised offender per year. Costs of any jail incarceration would be borne by the affected county and vary by jurisdiction.

In 2005, there were two felony dispositions for offenses included in the bills: both were for causing a serious injury while operating a watercraft under the influence of alcohol or drugs. Both offenders received probation. In 2004, there were three felony dispositions for offenses included in the bills: one for boating under the influence and causing a death, one for boating under the influence and causing serious injury, and one for operating an ORV under the influence and causing serious injury. The two boating sentences were to prison, and the ORV sentence was probation.

Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.